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Leonard C. Senia
Senia Casino Management Service, LLC

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What every U.S. casino and card club must know about compliance with the Office of Foreign Assets Control (OFAC) regulations

Leonard C. Senia

I. Introduction

U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") administers and enforces economic and trade sanctions based on United States ("U.S.") foreign policy and national security goals. These sanctions are imposed upon targeted foreign countries and regimes, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, terrorists, as well as other threats to the national security, foreign policy, or economy of the United States. Pursuant to Presidential national emergency powers, as well as authority granted by specific statutes, OFAC has the authority to prohibit transactions and freezes assets subject to U.S. governmental jurisdiction.[1]

To carry out its mission, OFAC publishes a list of targeted countries, including those with state-sponsored terrorism and also, periodically publishes names on a list referred to as the "Specifically Designated Nationals" ("SDN") List to enforce U.S. sanctions aimed at individuals and entities. All U.S. entities, including casinos and card clubs, must take reasonable steps to prevent illicit transactions being conducted with targeted countries and SDNs.

This paper discusses the OFAC sanctions programs related to country embargoes as well as the SDN List. Additionally, this paper discusses measures that may assist U.S. casinos and card clubs to better comply with OFAC regulations pertaining to customers or targeted countries. This paper focuses solely on the gaming side of the casino business. Nonetheless, the casino industry needs to understand that the non-gaming side of its business has exposures to OFAC requirements such as casino hotels and high-end retail stores (*e.g.*, jewelry). Please note that there are three sections of this paper that also would apply to the non-gaming side of a casino's corporate business (*i.e.*, "Who Is Required to Comply With OFAC Requirements," "What OFAC Programs Exits," and "OFAC Civil and Criminal Penalties"). Finally, to further assist readers, this paper provides 29 references/Web links to specific documents or Web sites so that readers can do further research if they wish.

Leonard C. Senia, B.A., M.P.A.
Senia Casino Management Service, LLC
Consultant &Trainer: Casino and Card Club Operations, Gaming, and Gambling

Former Senior Regulatory Project Officer
Financial Crimes Enforcement Network
United Stated Department of the Treasury

Member, Association of Certified Anti-Money Laundering Specialists

Email: lcsgamingconsultant@gmail.com

1 *See* "About Mission - Office of Foreign Assets Control (OFAC)," available at: http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx.

II. History of the Office of Foreign Assets Control

Prior to the establishment of OFAC, three Department of Treasury agencies preceded it. First, the Office of Foreign Funds Control ("FFC"), which was established at the beginning of World War II following the April 1940 German invasion of Norway. On April 10, 1940, FFC was established under authority of the Trading with the Enemy Act of 1917.[2] The Secretary of the Treasury administered the FFC program throughout the war. The FFC's original purpose was to prevent Nazi use of the occupied countries' holdings of foreign currency exchanges and securities as well as to prevent forced repatriation of funds belonging to nationals of those countries. As the war progressed, these controls were extended to protect assets of other invaded countries. Once the United States entered World War II formally after the December 7, 1941, Japanese air attack of the U.S. naval fleet at Pearl Harbor, Hawaii, the FFC played an important role in economic warfare against the Axis powers by blocking enemy assets and prohibiting foreign trade and financial transactions.[3]

On July 10, 1947, FFC was abolished and its functions were transferred to the newly established U.S. Treasury Office of International Finance (OIF). Then, on December 17, 1950, the Division of Foreign Assets Control was established within OIF, following the entry of China into the Korean War, when President Harry Truman declared a national emergency and blocked or froze all Chinese and North Korean depository accounts and assets that were subject to U.S. jurisdiction. Also, the Division assumed the administration of certain regulations and orders issued pursuant to the amended Trading with the Enemy Act.[4]

On October 15, 1962, the Treasury Department issued an order transferring the functions of the Division of Foreign Assets Control to the new Office of Foreign Assets Control ("OFAC"). Although the agency title changed slightly that year, OFAC's mission remained the same as its processor agencies. Additionally, OFAC has broad subpoena authority or powers as well as imposes civil monetary penalties for violations of its regulations. While OFAC issues Federal regulations, it functions more closely to an enforcement agency versus a regulatory agency. Also, the U.S. Department of Justice is the agency that has the authority to impose criminal penalties for violations of OFAC's regulations. While OFAC is an independent Treasury bureau it reports to the Under Secretary of the Treasury for Terrorism and Financial Intelligence.

2 *See* National Archives, "Administrative History of the Records of the Office of Foreign Assets Control," available at: http://www.archives.gov/research/guide-fed-records/groups/265.html#265.1.

3 *See* U.S. Department of the Treasury, OFAC, "Frequently Asked Questions and Answers," Question and Answer No. 2, located at: http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx.

4 *See* Title 50, United States Code.

III. Who is Required to Comply With OFAC Requirements?

All U.S. citizens and permanent resident aliens regardless of where they are located; all persons and entities within the United States;[5] and all U.S. incorporated entities and their foreign branches[6] must comply with OFAC regulations. Finally, in regards to Cuba and North Korea, OFAC regulations apply to all foreign subsidiaries owned or controlled by U.S. corporations. More specifically, OFAC regulations apply to:

> ". . . American citizens and permanent resident aliens wherever they are located; individuals and entities located in the United States (including all foreign branches, agencies, rep offices, etc.); corporations organized under U.S. law, including foreign branches; and (under TWEA based sanctions) entities owned or controlled by any of the above, the most important being foreign organized subsidiaries of U.S. corporations."[7]

OFAC has memorialized this by defining U.S. Person within each sanction program. For example, OFAC regulations define a "Person and Entity" as well as "United States Person" in the Iranian Transactions Regulations found in 31 C.F.R. §§ 560.305 and 560.314 are as follows.

> "§ 560.305 Person; entity.
>
> (a) The term *person* means an individual or entity.
>
> (b) The term *entity* means a partnership, association, trust, joint venture, corporation or other organization. . . .

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5 This would, of course, include casinos' domestic branch offices. Branch offices are detached casino headquarters organizational units and are listed on their organization charts. Typically, many large domestic casinos (*e.g.*, those that have $100,000,000s or more in gross annual gaming revenues) will maintain branch offices in cities around the United States that will accept currency for deposit to customers' casino front money accounts and/or in payment of markers. Normally, branch offices will place these customers' funds on deposit with their local depository institutions and then will wire transfer the funds to their corporate casinos' concentration accounts at the same depository institutions. For example, *see* Nevada Gaming Control Board, Minimum Internal Control Standards, Cage and Credit, Version 6 (9/1/2008), 1 - 16, at page 14, available at: http://gaming.nv.gov/modules/showdocument.aspx?documentid=4508. Casinos refer to domestic branch offices as casino "marketing offices." Reason is that the "Director of Casino Marketing--. . . . Overseas operation of . . . casino hosts, branch offices . . . ." *See* Casino Operations Management (John Wiley & Sons, March 15, 2004), by Jim Kilby, Jim Fox, and Anthony F. Lucas, 1 - 404, at page 80.

6 Many large domestic casinos have foreign branch offices, for example, casino foreign branch offices are common in Hong Kong, Seoul, Singapore, and Tokyo.

7 *See* found OFAC brochure, "OFAC Regulations for The Financial Community" (January 24, 2012), 1 - 31 (excluding attachment), at page 4, available at: http://www.treasury.gov/resource-center/sanctions/Documents/facbk.pdf.

§ 560.314 United States person.

The term *United States person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States (including foreign branches), or any person [*i.e.*, individual or entity] in the United States."

As another example, the definitions for a "Person" and "U.S. person," are similar for both OFAC's Burmese Sanctions Regulations and Sudanese Sanctions Regulations. *See* respectively, 31 C.F.R. §§ 537.313 and 537.321 and 31 C.F.R. §§ 538.309 and 538.315.

IV. What OFAC Programs Exist

This section discusses the two major OFAC programs that a casino or card club must comply with, namely the, (i) OFAC sanctions program and (ii) specially designated nationals list. U.S. law and regulations require that all corporations located in the United States (including U.S. branches, overseas branches or subsidiaries of U.S. corporations), both: (a) identify and (b) close, block, or freeze the assets and the accounts (including all types of financial institution transactions) when such property is located in the United States, is held by U.S. citizens, permanent resident aliens, or entities, as well as property that comes into the possession or control of U.S. citizens, permanent resident aliens, or entities.[8]

A. Sanction Programs

While each sanctions program establishes its own unique requirements and limits, even so all include instructions against commerce with prohibited entities that are named and an obligation to freeze assets of those a sanction program applies to. Prohibited transactions are financial or trade transactions in which U.S. persons are barred from conducting unless OFAC authorized them and/or Federal statute exempts them specifically. Since each sanction program is based on different foreign policy and national security goals, OFAC financial and trade prohibited transactions may vary between programs.

Also, OFAC publishes lists of economic and trade sanctions that the U.S. Government has issued against targeted foreign countries in the form of imposing controls on transactions and freezing of foreign assets under U.S. jurisdiction.[9] Many of OFAC's sanctions are based on United Nations and

8 *See* 31 C.F.R. Part 501, is available at: http://www.gpo.gov/fdsys/granule/CFR-2012-title31-vol3/CFR-2012-title31-vol3-part501/content-detail.html.

9 For information pertaining to OFAC's embargo or sanctions program (*e.g.*, a current list of countries, jurisdictions and governments designated by with economic sanctions), refer to OFAC's Sanctions Programs and Country summaries available at: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx.

other international mandates, are multilateral in scope, and necessitate close cooperation with allied countries. OFAC has promulgated 33 Federal regulations to help administer its economic and trade sanctions program. Currently, there are 16 OFAC sanctioned countries, as well as 17 other sanction programs targeting individuals and entities located around the world. Only five of the 16 countries have comprehensive sanctions programs, namely, Burma (Myanmar), Cuba, Iran, Sudan, and Syria. It is important to note that for the non-comprehensive OFAC sanctioned programs, there are no broad prohibitions on dealings with these other 11 sanctioned countries, instead only those against specific named individuals and entities. In the cases of certain sanction programs, such as those regarding Cuba and North Korea, also all foreign subsidiaries owned or controlled by U.S. companies must comply. There are exemptions, depending on the sanction program, but OFAC must authorize any such exemption.

B. Specially Designated Nationals and Blocked Persons Lists

The specific individuals, companies, governmental entities, organizations, and merchant vessels named by each OFAC sanctions program are maintained on an OFAC cumulative list of the parties from all programs called the "Specially Designated Nationals and Blocked Persons List" (*i.e.*, "SDN" List),[10] with whom any kind of transaction is forbidden between U.S. Persons and SDNs (including facilitating transactions with SDNs). Furthermore, businesses are required to terminate any other existing relationship with SDN named persons. As of April 2014, there are over 6,000 names of companies and individuals from all over the world that are designated on the SDN List.[11] For example, for natural persons the SDN List contains the names of terrorists, drug cartels, proliferators of weapons of mass destruction, and other specially designated persons against whom the OFAC sanctions apply.

For these lists and specific instructions regarding what businesses may or may not do under OFAC regulations, refer to the OFAC Web site at: www.ustreas.gov/ofac. For information pertaining to OFAC's Specially Designated Nationals List, or questions concerning the financial institution's compliance with OFAC regulations, refer to OFAC at: http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx. Generally speaking, U.S. Persons must block (seize) any property in which an SDN has any interest, even indirect, which comes into their control or ownership. Blocking or seizing property is discussed in more detail as it applies to casinos and card clubs later on in this article.

10 OFAC's SDN List is at its Web page: http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf, or http://www.treas.gov/offices/enforcement/ofac/sdn/sdnlist.txt. The SDN List may be updated by the Federal government at any time.

11 *See* U.S. Department of the Treasury, OFAC, "Frequently Asked Questions and Answers," Question and Answer No. 10.

OFAC's reporting regulations, codified at 31 C.F.R. Part 501, require U.S. financial institutions to block and file reports on accounts, payments, or transfers in which an OFAC-designated country, entity, or individual has any possession of, control, or interest in.[12] Financial institutions are required to file reports for transactions they block (*i.e.*, a Report of Blocked Transactions)[13] or reject (*i.e.*, a Report of Rejected Transactions).[14] The report of blocked transactions must be filed with OFAC within ten business days of the blocking of the property.[15] Also, the report of rejected transactions must be filed with OFAC within ten business days of the rejection of the property.[16] Failure to file required OFAC reports result in fines to financial institutions. The reports filed with OFAC are deemed privileged and confidential. In addition, OFAC requires U.S. financial institutions to file an annual report of all property blocked or funds retained under OFAC Regulations found in Title 31 of the Code of Federal Regulations, Parts 500 through 599. The latter report is to be submitted by September 30 each year to the Compliance Programs Division, OFAC, Department of the Treasury, Washington, D.C. 20220.[17] The Webpage link for these specific OFAC regulations is located at: http://edocket.access.gpo.gov/cfr_2010/julqtr/pdf/31cfr501.603.pdf.

In response to the September 11, 2001 terrorists' attacks, on September 23, 2001, President George W. Bush signed into law Executive Order 13224, which in general terms provides a means to disrupt the financial support network for terrorists and terrorist organizations. The Order does this by expanding the United States' power to target the support structure of terrorist organizations, to freeze the U.S. assets, and to block the U.S. transactions of terrorists and those that support them. For example, Executive Order 13224 blocks all property and interests in property of designated foreign persons, located in the United States, whom are:

12 *See* 31 C.F.R. § 501.603. For example, when checking for verified name matches of individuals on the Specially Designated Nationals and Blocked Persons List (*i.e.*, "SDN" List) if funds are in a customer's deposit account, OFAC would require U.S.: financial institutions to block the funds and then notify it. Also, pertaining to OFAC regulations, the term "interest" when used in respect to property means interest of any nature whatsoever, direct or indirect.

13 *See* OFAC Report of Blocked Transactions, located at: http://www.treasury.gov/resource-center/sanctions/Documents/e_blockreport1.pdf.

14 *See* OFAC Report of Rejected Transactions, located at: http://www.treasury.gov/resource-center/sanctions/Documents/e_recjectreport1.pdf.

15 *See* 31 C.F.R. § 501.603(b)(1)(i).

16 *See* 31 C.F.R. § 501.604(c).

17 *See* TD F 90-22.50, Annual Report of Blocked Property, located at: http://www.treasury.gov/resource-center/sanctions/Documents/td902250.pdf. Also, *see* 31 C.F.R. § 501.603(b)(2).

> ". . . determined by the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States;"[18]

Additionally, Executive Order 13224 contains a somewhat similar provision for blocking assets of designated foreign persons ". . . determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General . . . ." to have committed, or to pose a significant risk of committing, acts of terrorism. Also, this provision blocks all property and interests in property of designated foreign persons, located in the United States, whom are: ". . . determined by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General; (i) to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism. . . ."[19] OFAC maintains a list of individuals and organizations identified by Executive Order 13224,[20] from the U.S. Department of State Web site.[21]

OFAC has issued a list of Frequently Asked Questions and Answers, which describes, among many other things, steps a financial institution should take before calling its compliance hotline toll free at 1-800-540-6322, or locally at 202-622-2490, regarding a possible hit on one of their watch lists.[22] OFAC employees monitor the compliance hotline during Monday through Friday,[23] 7:00 a.m. to 7:00 p.m. EST.

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18 *See* 66 Fed. Reg. 49079 - 49083, 49079 (September 25, 2001), "Executive Order 13224 - Blocking Property And Prohibiting Transactions With Persons Who Commit, Threaten To Commit, Or Support Terrorism," Section 1(b), available at: http://www.treasury.gov/resource-center/sanctions/Documents/13224.pdf.

19 *Ibid*., at 49080, Executive Order 13224, Section 1(d).

20 *See* "Executive Order 13224 - Blocking Property And Prohibiting Transactions With Persons Who Commit, Threaten To Commit, Or Support Terrorism," available at: http://www.treasury.gov/resource-center/sanctions/programs/documents/terror.pdf.

21 *See* U.S. Department of State, "Individuals and Entities Designated by the State Department Under E.O. 13224," Web site located at: http://www.state.gov/j/ct/rls/other/des/143210.htm.

22 *See* U.S. Department of the Treasury, OFAC, "Frequently Asked Questions and Answers," Question and Answer No. 5.

23 OFAC employee availability excludes Federal Government Holidays.

V. Suspicious Activity Reporting and OFAC's Blocking Reports

Financial Crimes Enforcement Network ("FinCEN")[24] has deemed its Bank Secrecy Act ("BSA") regulations requiring the filing of suspicious activity reports to be satisfied by the filing of a blocking report with OFAC in accordance with OFAC's reporting regulations. An OFAC blocking report describes potentially suspicious activity. OFAC provides the information on those reports to FinCEN for inclusion in the suspicious activity reporting database which is made available to law enforcement. Therefore, ". . . a financial institution that files a blocking report with OFAC due to the involvement in a transaction or account of a person designated as a Specially Designated Global Terrorist, a Specially Designated Terrorist, a Foreign Terrorist Organization, a Specially Designated Narcotics Trafficker Kingpin, or a Specially Designated Narcotics Trafficker, shall be deemed to have simultaneously filed a suspicious activity report on the fact of the match with FinCEN, in satisfaction of the requirements of the applicable suspicious activity reporting rule."[25] This interpretative guidance does not affect a financial institution's obligation to identify and report suspicious activity to FinCEN that is beyond an OFAC match. For example, when a financial institution is in possession of suspicious transaction information not included on the blocking report filed with OFAC, a separate suspicious activity report must be filed with FinCEN to include that information. As a further example, when a financial institution is aware of facts and circumstances surrounding the OFAC match that are independently suspicious and are otherwise required to be reported under existing FinCEN regulations, a separate suspicious activity report must be filed with FinCEN. When financial institutions follow this FinCEN guidance on filing a SAR with FinCEN pertaining to OFAC reporting obligations, this disclosure prevents OFAC from discovering a violation of its regulations which should have been disclosed to it.

24 OFAC and FinCEN are sister bureaus of the U.S. Department of the Treasury. FinCEN's role is to protect the U.S. financial system from abuse by domestic and international money launders, terrorist financers, and other financial criminals. In this capacity, FinCEN: (i) issues Federal regulations and interpretative guidance; (ii) provides outreach to the regulated industries, as well as civil and criminal law enforcement; (iii) supports the examination functions performed by designated Federal and State regulatory agencies; (iv) pursues civil enforcement actions when warranted; (v) maintains and processes information reported under the BSA, as well as makes the information available to law enforcement and regulatory authorities; (v) provides investigative case support to law enforcement and regulators; (vi) identifies and issues financial crime trends, patterns, and emerging threats based on suspicious activity reporting; and (vii) fosters international cooperation with its governmental counterparts around the world. Also, FinCEN serves as the U.S. financial intelligence unit ("FIU") and as of 2013 is one of 132 FIUs making up the Egmont Group of Financial Intelligence Units.

25 *See* FinCEN Interpretive Guidance: Interpretation of Suspicious Activity Reporting Requirements to Permit the Unitary Filing of Suspicious Activity and Blocking Reports, December 2004, page 4, available at http://www.fincen.gov/news_room/nr/pdf/20041214a.pdf.

Based on the discussions above, it should be clear that OFAC requirements are separate and distinct from the FinCEN's requirements under the USA PATRIOT Act and the BSA. Primarily, FinCEN's regulations pertain to money laundering and terrorist financing, while OFAC enforces economic and trade sanctions as a tool of U.S. foreign policy. Since OFAC and FinCEN share a somewhat similar national security goal, institutions may confuse compliance with the USA PATRIOT Act and FinCEN's requirements as compliance with U.S. trade sanctions laws. The only area where FinCEN and OFAC regulations converge is derived from FinCEN's determination that its regulations requiring the filing of suspicious activity reports can be satisfied by the filing of a blocking report with OFAC, which was discussed herein.

VI. Casino Compliance with OFAC

This section discusses four aspects of how a casino or card club can comply with the OFAC sanctions program and the specially designated nationals list, namely, (i) FinCEN casino recordkeeping provisions can assist in OFAC compliance, (ii) casino compliance with SDN list, (iii) searching the SDN List, and (iv) creation and implementation of an OFAC compliance program. Section VI is of critical importance to assist a casino or card club to develop an effective OFAC compliance program.

A. FinCEN Casino Recordkeeping Provisions Can Assist in OFAC Compliance

Pertaining to the FinCEN's regulations, customers can gamble anonymously at U.S. casinos and card clubs unless they: (i) open a check cashing, credit, deposit, player rating, or slot club account; (ii) conduct reportable currency transactions in excess of $10,000 in a gaming day, including multiple transactions;[26] or (iii) fall under FinCEN's customer identification requirements for deposit and credit accounts,[27] checks with a face value of $3,000 or more,[28] domestic wire transfers in excess of $3,000,[29] and international wire transfers of any dollar value.[30] (Emphasis added.)

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26 *See* 31 C.F.R. §§ 1021.311 and 1021.313. These casino currency transaction reporting requirements pertain to filing FinCEN's Currency Transaction Report.

27 *See* 31 C.F.R. § 1021.410(a).

28 *See* 31 C.F.R. § 1021.410(b)(9).

29 *See* 31 C.F.R. § 1010.410(e) and (f).

30 *See* 31 C.F.R. § 1021.410(b)(5). Also, see FIN-2009-G004– Frequently Asked Questions – Casino Recordkeeping, Reporting and Compliance Program Requirements (September 30, 2009), Question and Answer No. 20, available at: http://www.fincen.gov/statutes_regs/guidance/pdf/fin-2009-g004.pdf.

In a casino or card club environment the only realistic way that a casino or card club would be able to check OFAC's SDN List is if a customer: (i) opened one of the aforementioned 5 types of casino accounts, (ii) triggered the FinCEN currency transaction reporting requirement, (iii) any Federal income tax form filed containing customer information; or (iv) triggered any of the three FinCEN recordkeeping requirements discussed above. Therefore, a practical way OFAC's regulations would apply in a casino or card club is for customers with deposit or credit accounts, check cashing accounts, other financial transactions documented in slot club player and/or player rating accounts. Another practical way that OFAC's regulations would apply in a casino or card club would be for customers who are foreign nationals and are entered on: (i) FinCEN 112, Currency Transaction Report ("CTR"), (ii) listed on IRS Forms W-2G, Certain Gambling Winnings (*e.g.*, keno, off-track betting, or slot win); (iii) listed on IRS Forms 1042-S, Foreign Person's U.S. Source Income Subject to Withholding;[31] or (iv) listed on IRS Form 1099-Misc, Miscellaneous Income (*e.g.*, pertaining to prizes or awards). For example, a reasonable procedure would be to search the SDN List, or use commercial vendor software to do such a search, to prevent OFAC violations before issuing an IRS Form 1042-S on a jackpot payout, or any other type of financial transaction, with individuals known to be foreign nationals. A further practical way would be to search the SDN List for customers conducting large foreign currency exchanges involving casino deposit accounts.[32] Therefore, a casino or card club would be obliged to query the OFAC SDN List before conducting any of the above transactions pursuant OFAC regulations. Also, established casino accounts on customers should be compared periodically with the current and updated OFAC lists.

31 A casino issues IRS Form 1042-S to a nonresident alien for most gambling winnings. Proceeds from a wager placed in baccarat, blackjack, craps, roulette, or big-6 wheel are not amounts subject to reporting on an IRS Form 1042-S. (Emphasis added.) A foreign person is subject to a 30 percent withholding rate unless the recipient is from one of the tax treaty countries listed under Gambling Winnings (Income Code 28) in Pub. 515, in which case, such bilateral governmental treaties can contain provisions that can modify this rate.

32 Foreign currency exchanges occur when a customer exchanges of currency of one country for currency of another country (usually foreign for U.S.). Many casinos maintain records for foreign currency exchanges that typically consist of a tally sheet that describes the amount of exchange above a certain threshold, as well as calculations based on current exchange rates, that occurred between a casino cage cashier and a customer, regardless if they relate to gambling. Typically, when a customer's foreign currency transaction exceeds a sufficiently high U.S. dollar amount a casino records the foreign currency by denomination on an internal casino receipt form which reflects the rate of exchange and the name of the foreign currency which was exchanged or deposited (*i.e.*, front money deposit, safe keeping deposit, or wagering). Also, a cage cashier segregates any foreign currency, regardless of the amount. For deposit accounts only, a customer's foreign currency would be segregated, a receipt prepared, and the currency and receipt kept by customer name or account number in an imprest drawer. Outside of deposit transactions, foreign currency received by a cage cashier also would be segregated in an imprest drawer, but not kept by customer name. Unfortunately, for non-deposit account transactions no customer name is recorded unless a transaction is in excess of $10,000.

B. Casino Compliance with SDN List

A casino, or a card club, and their employees may be exposed to transactions that are subject to OFAC regulations since gaming/gambling attracts customers worldwide. Thus, the nature of the gaming industry poses inherent risks that an individual on the SDN List could be a casino customer and gain access to the U.S. financial system through conducting gambling transactions in a casino or card club. All U.S. persons, including casinos and card clubs, must take reasonable action to ensure that illicit transactions involving targeted countries and SDNs are interdicted. Pursuant to OFAC regulations, in the event that a casino or a card club determines that a customer's full name, recorded in its database or involved with a request for a financial service, matches a name on the SDN List, a casino or a card club should request the customer's passport number, date of birth, and place of birth.[33] If the name and any of this other identifying information matches the SDN List, a casino or a card club should inform the customer that it cannot permit him/her to conduct any transactions at the casino or a card club since it is prohibited by U.S. law from conducting transactions with individuals and entities on the SDN List. Also, for verified name matches of individuals on the SDN List, when such funds are in a customer's deposit account and/or involve repayments to a customer's credit account, a casino or card club must block the funds and notify OFAC. In addition, it is permissible for a casino or card club to reveal to a customer that the reasons that funds on deposit and/or involved in repayment of a marker were blocked was due to a hit on the OFAC SDN list. Moreover, a casino or card club needs to be aware that there is no minimum dollar amount for blocking transactions involving individuals and entities on the SDN List.[34]

33 Please note that a number of commercial vendors offer software that will search OFAC's SND list and sanction programs, as part of the financial transaction and report matches for businesses, prior to completing transactions. Most depository institutions use such commercial vendor software as they are conducting customer transactions to prevent OFAC violations. For example, some casinos will use Equifax, Inc., to complete an OFAC review/screen during a credit inquiry process. Equifax, a consumer credit reporting agency that is headquartered in Atlanta, Georgia, will provide OFAC results on a customer's credit report to financial institutions that have contracted for its services. Other consumer credit reporting agencies may offer this type of service as well. *See* "Terrorism Prevention and OFAC: What Every Casino Must Know," by Mindy Letourneau, (October 1, 2011), available at: http://www.casinoenterprisemanagement.com/articles/october-2011/terrorism-prevention-and-ofac-what-every-casino-must-know.

34 For tribal casinos, *see* National Indian Gaming Commission "Bulletin 2007-3, Office of Foreign Asset Control (OFAC) Compliance" (November 9, 2007), available at: http://www.nigc.gov/Reading_Room/Bulletins/Bulletin_No._2007-3.aspx. Please note that Federally recognized tribes and tribal businesses (including casinos), must comply with OFAC regulations, regardless of whether or not they are considered financial institutions under FinCEN's regulations, because they are considered U.S. persons. Also, a September 2007, Office of Inspector General ("OIG"), Audit Report of Foreign Assets Control noted that: "OFAC requirements impact . . . certain industries regulated by the IRS." The OIG report continued by stating that: "[i]ndustries regulated by the IRS for Bank Secrecy

Casinos or card clubs are required to prohibit or reject many types of cage financial transactions that occur with specified countries, entities, U.S. citizens, and permanent resident aliens, and in certain cases, to block customer deposit and/or credit accounts with specific countries, entities, U.S. citizens, and permanent resident aliens. While OFAC does not mandate that casinos or card clubs test every transaction and identify every customer, it does require casinos or card clubs to examine their transactions, as well as the risks that customers may be on the SDN List, and then to have policies, procedures, and internal controls to mitigate that risk.

OFAC compliance requirements will impact primarily the following casino and/or card club financial services offered to customers whom are foreign nationals and may be on the SDN List: (i) deposit accounts (*i.e.*, access, front money, safekeeping, and wagering),[35] (ii) credit accounts,[36] (iii) ACH electronic payments transaction,[37] and (iv) electronic wire transfers, as well as wire transfers to countries, jurisdictions, and governments designated by OFAC with economic sanctions. There are other types of casino or card club financial transactions that are subject to OFAC requirements such

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Act and OFAC compliance include casinos, money services businesses, insurance companies, and jewelers." *See* Department of the Treasury, Office of Inspector General, Audit Report (OIG-07-048), "Foreign Assets Control" (September 20, 2007), 1 - 25, at page 9, available at: http://www.treasury.gov/about/organizational-structure/ig/Documents/OFAC%20Final%20Report%209-20-07.pdf.

35 Money deposited by a customer into a personal front money account with a cage cashier could later be withdrawn at a gaming table (in the form of chips to bet or wager with after signing a so-called "front money marker" against the deposited funds), electronic gaming devices (in the form of credits or access cards), or later at a cage (in the form of casino check, currency, wire transfer, *etc.*). This internal account is offered to allow a customer to deposit with a casino funds to be gambled or won. A wagering account is similar to a front money account, except that it is limited to pari-mutuel horse race or greyhound transactions with book/sports pool window cashiers. An access account uses a customer plastic casino credit card-sized device, with a magnetic strip, to deposit and transfer funds to and from designated electronic gaming devices (*e.g.*, a slot machine/video lottery terminal) or table games, as well as for conducting other transactions at casino cages. Also, card clubs maintain such personal deposit accounts, but call them instead "player bank accounts."

36 A casino can offer a credit account which will allow a customer to take out a marker (*i.e.*, IOU) draw on a casino line of credit to obtain chips, currency, or tokens for gambling purposes. Customers repay the credit extensions with chips, currency, tokens, negotiable instruments, wire/fund transfers, money transfers, *etc*. Also Central Credit, Inc., which is owned by Global Cash Access, Inc., maintains credit history and other information on players for the mutual use of those casinos that subscribe to its services.

37 ACH stands for Automated Clearing House, which is an electronic financial network in the United States that processes large volumes of credit and debit transactions in batches.

as: (i) check cashing,[38] (ii) check payments, (iii) credit card advances, (iv) jackpot payouts, (v) foreign currency exchanges, (vi) customer safety deposit boxes,[39] and/or (vii) any other transaction that may be considered prohibited when performed with specific countries, entities, U.S. citizens, and permanent resident aliens. For these types of services and transactions a casino or card club needs to understand that the time to vet such transactions against watch lists is before accepting or paying out funds. (Emphasis added.) If a casino or a card club has a compliance process for vetting such funds before being accepted and then it later turns out that an unwitting OFAC violation has occurred, a casino or card club would be in a better position in regards to civil penalties if it has made a reasonable effort to comply with OFAC requirements.[40]

A casino or card club has two alternatives for searching the SDN List, namely automated or manual searches. A casino or card club would need to consider its risk factors before deciding whether it should purchase computer software and/or equipment to do automated SDN List searches. If a casino or card club decides, based on conducting an OFAC risk-based assessment, that the return on investment of software and/or equipment would be in the low to mid-range, it could require cage employees, for example, to download regularly from OFAC's Web site the SDN List in "PDF" or text formats[41] to a main cage computer, or possibly its information systems staff could download the list to its computer network. If a casino or card club decides to use a manual process, based on conducting an OFAC risk-based assessment, and determines that it is at low to very low risk for an OFAC-related transaction, it could require cage employees, for example, to download the SDN List periodically (*e.g.*, monthly or quarterly). Sometimes, OFAC updates the SDN List every few days or so, but the time period can be longer.

On March 13, 2013, OFAC launched a new and improved tool for searching its SDN List. The new version of SDN Search provides users with much greater flexibility when searching for names since it no longer returns only exact matches. Now SDN Search makes use of character, phonetic, and string matching algorithms to provide a user with a broader

38 Check cashing would include each transaction between a casino and its customers involving the following types of instruments: business checks (including casino checks); cashier's checks; official bank checks; personal checks; third-party checks; promissory notes; traveler's checks; and money orders.

39 Even though a casino or card club would not know the contents of a customer's safety deposit box, such names would need to be vetted prior to assigning the box.

40 Please note that while OFAC has issued a helpful list of 358 "Frequently Asked Questions and Answers," unfortunately, none of them addresses some gambling transactions on the casino floor (*e.g.*, purchases of high denomination casino chips with currency at gaming tables). This is problematic since within a casino a chip (a bearer "IOU" instrument) and currency are fungible items, which means that they are exchangeable or interchangeable with each other.

41 Please see footnote 6.

set of search results. The new tool gives SDN Search the ability to account for differences in spelling and transliteration. OFAC offered this upgraded research tool free to the public to give users of the SDN List an improved searching capability to aid in assuring compliance.[42]

Given the above, casinos and card clubs should review customer cage transactions involving: (i) deposit accounts, (ii) credit accounts, (iii) check cashing, (iv) check payments, (v) credit card advances, (vi) electronic wire transfers, (vii) jackpot payouts, and (vii) foreign currency exchanges against the OFAC SDN List to determine if an individual is listed with OFAC, as well as against the names of OFAC sanctioned countries. If there is an individual name match, check the date of birth and Social Security number (if available) to confirm a valid match. If an individual name is not the same as found on the SDN list, then likely there is no valid name match. Nonetheless, when there are positive matches against the SDN List and/or U.S. economic sanctioned countries, casinos and card clubs must block the transactions. Title to blocked property remains with the sanctions target (designated country, national, or blocked person), but the exercise of rights associated normally with the ownership of such property is re-delegated to the U.S. Treasury Department and controlled by OFAC specific licenses.

If a casino or card club does not notify OFAC of a customer's illicit transaction and/or reject a customer's illicit transaction, which will pass through the United States' banking system, a casino's or card club's depository institution has a regulatory duty to do so regardless. A casino's or card club's depository institution will review all casino or card club deposits against the SDN List, and if there is a valid match, the depository institution will notify OFAC immediately. As such, a casino or card club which forwards a customer's check, and/or marker deposit to its commercial bank for deposit to its business account, but does not review the OFAC SDN List and/or sanction program, could be subject to significant OFAC penalties for a willful violation[43] of its requirements. The same would be true of a customer's sending or receiving a wire transfer from, to, or through a casino's or card club's commercial bank as it may pertain to OFAC requirements.

42 *See* OFAC, Research Center, "New SDN Search Tool" (March 13, 2013), available at: http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20130313.aspx.

43 Please note that OFAC regulations do not include violations for gross negligence or a pattern of negligent activity.

C. Assessment of OFAC Risks that a Casino Faces

Casinos or card clubs should consider evaluating those risks and examine other factors. Casinos or card clubs may find useful as guidance the overall approach taken in FIN-2010-G002, Suggested Best Practices - Casino or Card Club Risk-Based Compliance Indicators, (June 30, 2010).[44] The document provides factors to consider and suggested best practices to assist in the development of BSA risk-based approach indicators, procedures, and internal controls standards for casinos and card clubs to combat money laundering and terrorist financing. Also, the document provides a basic framework for casinos and card clubs to reference when developing their own compliance policies, procedures, internal controls, and systems that accurately and proportionately reflect their business/customer risk profile. While this guidance was written for BSA compliance, the vast majority of the general and customer risk-based indicators would apply equally well to overall compliance with OFAC.

Besides the indicators listed in this guidance, a couple of other helpful indicators to include would be the number of taxable jackpots a casino processes for non-U.S. citizens,[45] and casino supplies and/or vendors used whose company or corporate headquarters is located outside the United States (*e.g.*, the Caribbean and Central America). By conducting a risk assessment, casino or card club management can determine its high-risk transactions, which require a SDN List search, and institute appropriate policies, procedures, and internal controls based on those transactions. Also, as part of an internal audit process, an audit staff should review management's risk assessment and its policies, procedures, and internal controls for reasonableness.

D. Creation and Implementation of an OFAC Compliance Program

While not required by specific regulation, but rather as a matter of prudent business policies and procedures as well as to ensure reasonable compliance, casinos and card clubs should consider establishing and maintaining an effective, written OFAC program that is commensurate with their OFAC risk profile (based on the types of customers, products, and services, as well as geographic locations). Also, casinos and card clubs should include as part of their OFAC risk profile an analysis of their international marketing practices for touch-points that could result in an OFAC violation. An effective program to comply with OFAC should identify high-risk areas, if any, and provide, for example,: (i) create and retain records; (ii) appropriate policies, procedures, and internal controls for screening and reporting, (iii) periodic independent internal/external testing for compliance, (iv)

44 This guidance for casino or card club risk-based compliance indicators is at Web page: http://www.fincen.gov/statutes_regs/guidance/pdf/fin-2010-g002.pdf. The author of this article was the drafter of this guidance document.

45 Please note that a non-U.S. citizen would be a nonresident alien.

designate an employee or employees as responsible for compliance, (v) an ongoing training program for appropriate personnel in all pertinent operational areas, and (vi) use of automated processing systems and automated programs to aid in assuring compliance.

OFAC does not mandate a specific type of compliance program that casinos or card clubs should have, but instead acknowledges that every organization has a different level of risk that must be assessed to determine the best way to ensure that it does not do business with a sanction's target. Thus, as a matter of prudent business policies and procedures as well as to ensure reasonable compliance, casinos or card clubs should consider conducting an annual risk assessment to review their customer transaction types.

To promote the implementation of risk-based compliance programs, OFAC has conducted reviews of casinos and participated in outreach events to educate the gaming industry about best practices from an OFAC perspective. Partnering with the Federal Indian Gaming Working Group ("IGWG"),[46] OFAC engaged in a collaborative effort with other Federal agencies to promote the use of internal controls and due diligence as pillars of a strong compliance program.

If a casino or card club decides not to establish an OFAC compliance program, or establishes a program but fails to implement the program, it may expose its business to significant criminal and/or civil penalties. Therefore, when a casino or card club establishes an internal or external program to audit for OFAC compliance, it helps to protect the gambling establishment against significant criminal and/or civil fines and penalties while also helping to discourage or keep criminals from using a casino or card club to circumvent OFAC requirements.

It is suggested that a casino and a card club should designate compliance personnel responsible for monitoring its compliance with OFAC requirements. Also, formal compliance responsibilities should be assigned to other operations and systems managers such as a credit manager, a casino cage manager, a cage shift manager, a front window cashier (general cashier), a slot cashier, and an information technology manager.

A casino or card club with an internal auditing department could be designated with assisting in the development of a corporate OFAC compliance program and then be required with verifying those policies, procedures, and internal controls that were established are being followed. If a casino's or card club's internal audit department conducts quarterly BSA audits, and its OFAC risk profile suggests a longer time period for

46 Member agencies of the IGWG are the National Indian Gaming Commission; the Federal Bureau of Investigation; Bureau of Indian Affairs, Office of Law Enforcement Services; Internal Revenue Service, Office of Tribal Government; Department of the Interior, Office of the Inspector General; Financial Crimes Enforcement Network; and the Department of Justice, United States Attorney's Subcommittee on Indian Issues.

OFAC audits, the author suggests internal audit should be responsible for conducting an in-depth OFAC compliance audit at least once a year because of the SDN List. One financial institution included the following paragraph in one of it's "compliance memoranda."

> "A director of compliance for a major casino gaming operation stated that:
>
> 'Procedures also should include how management will handle the situation if a patron's name appears on the SDN List. OFAC provides a number to call for confirmation, but because the gaming industry is 24/7, a question likely will arise when a live person is not available to take the call. The SDN List contains some common names, and because casinos would not want to reject a transaction without being certain there is an exact match, it is important for the casino to check all personally identifying information.
>
> To mitigate this risk of misidentifying a patron as someone on the SDN List, the procedures could require a second opinion from within the casino so a cage employee, for example, will not be forced to make the judgment call and tell the patron that he or she might be on the SDN List. When there is a SDN List hit . . . , a cage manager and a surveillance staff member [should] evaluate the information. If a match is confirmed, surveillance takes a photo, which is not required by OFAC but is appropriate given the ability to do so. . . . [and] keep[s] this information on file in case OFAC requests more information about the attempted transaction. Cage management then informs the patron that he or she is on the list and provides the OFAC telephone number.'"[47]

While policies, procedures, and internal controls can be established, casino or card club management would rely on employees to follow them. A common pitfall is for cage and/or slot employees to overlook policies, procedures, and internal controls, by accident, when conducting transactions that would be related to OFAC requirements. For example, this occurs because cage and/or slot employees do not deal with OFAC-related transactions on a regular basis. In these situations, cage and/or slot employees may forget to search the SDN List when identified high-risk transactions, such as incoming or outgoing wire transfers, and/or taxable jackpots[48] for a non-U.S. citizen.

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47 *See* Institute of Internal Auditors, The Gaming Auditorium, "Q&A: Examining OFAC's Impact on the Gaming Industry," 4th Quarter 2010, Vol. 13, No. 14, located at: http://www.theiia.org/Gaming/index.cfm?iid=684.

48 For example, when a customer who is a nonresident alien wins a large jackpot from a slot machine or video lottery terminal, bingo, Caribbean stud poker, keno, and/or let it ride poker.

One way for a casino or a card club to mitigate this pitfall and risk is through checklists, notices and reminders, and periodic employee training. Another way would be for a casino or a card club to maintain a list or log of customers who are barred from conducting financial transactions due to inclusion on the SDN List for a period of 5 years. A copy of the list or log should be submitted to a casino or card club compliance officer. The list or log should include the following:

- Name of the customer;
- Passport number and country;
- Date of birth;
- Place of birth;
- Type of transaction attempted;
- Date the customer was barred from play;
- Verification that the customer's player's slot club card was deactivated (if applicable); and
- Name of employee making the determination and the reason for barring a customer.

Both approaches are practical and should be considered by casino or card club management.

Historically, OFAC has viewed an established OFAC compliance program favorably as a mitigating factor to be considered in the assessing of civil penalties. The concise regulation on an OFAC "Compliance Program" is found at 74 Fed. Reg. 57603. To this end, also OFAC published a revised but condensed risk matrix for financial institutions (but not for other industries), which is found at 74 Fed. Reg. 57607 - 57608. The consolidated risk matrix is a welcome development that will make financial institutions' compliance programs easier to develop and maintain. Of course, the OFAC term "financial institutions," would include casinos and card clubs since they are defined as financial institutions under Federal statute and FinCEN's regulations.[49]

In conclusion, what are the seven pillars that a casino or card club should establish and maintain to have an effective OFAC compliance program?

49 *See* 31 U.S.C. § 5312(a)(2)(X) and 31 C.F.R. § 1010.100(t)(5)(i) and (t)(6)(i).

- Design a program commensurate with its OFAC risk profile (based on products, services, customers, and geographic locations).
- Create and retain records needed to: (i) substantiate compliance with trade sanction programs, (ii) prohibit transactions, (iii) close, block or freeze assets and accounts, and (iv) file required reports.
- Incorporate policies, procedures, and a system of internal controls designed to assure compliance
- Establish independent internal or external testing for compliance.
- Provide ongoing training for appropriate personnel in all relevant operational areas.
- Designate an employee or employees to assure daily compliance.
- Use automated data processing systems to aid in assuring compliance.

The third through the seventh pillars are very familiar to the author since these are similar to the ones he helped to put in place in December 1994 pursuant to the BSA for the U.S. casino industry.[50]

VII. OFAC Civil and Criminal Penalties

OFAC, in conjunction with the Department of Justice, can impose criminal penalties against corporations, officers and directors, and individuals involved in willful violations of U.S. economic and trade sanctions programs. Willful violations may include those that result from conscious disregard, refusal to comply with OFAC requirements, or intentionally not asking questions of customers that will help determine when they are affected by economic and trade sanctions. Also, OFAC has independent authority to impose civil monetary penalties for violations. The maximum penalties for each sanctions program vary by the particular country program.[51] Thus, OFAC requirements allow for individual criminal and civil liability, not just corporate liability. For example, a casino manager, an assistant casino manager, a credit manager, a casino cage manager, a cage shift manager, a front window cashier (general cashier), a slot cashier, and similar employees are individually liable for any willful OFAC violations that pertain to conducting transactions like those discussed earlier in this article. Nonetheless, inadvertent violations are more likely to be treated favorably by OFAC if corporations or companies have put forth a good

50 *See* 59 Fed. Reg. 61660 - 61662 (December 1, 1994) - modifying and putting into final effect the rule originally published at 58 Fed. Reg. 13538 (March 12, 1993), available at: http://www.fincen.gov/statutes_regs/frn/pdf/frn19941201.pdf.

51 *See* KnightGUARDIAN "OFAC Penalties," Webpage located at: http://www.knightguardian.com/sub.asp?pageName=OFACPenalties.

faith effort to avoid prohibited transactions by implementing an effective program to comply with OFAC regulations. Both the civil and criminal penalties for OFAC violations can be substantial.

Each OFAC sanctions program carries different penalties for violations. Criminal OFAC violations (*i.e.*, knowingly conducting transactions with an SDN) can result in substantial criminal fines for committing, attempting, aiding, or abetting a violation as well as conspiracy to commit a violation and can result in: (i) corporate fines that range from $50,000 to $10,000,000 per count; (ii) personal fines from $50,000 to $5,000,000 per count; (iii) and/or imprisonment that range from 10 years to 30 years.[52] An OFAC civil monetary penalty violation may include committing, attempting, or causing a violation as well as conspiracy to commit a violation and can range from $11,000 to $1,075,000 per violation (the high penalty applies to violations of the Foreign Narcotics Kingpin Designation Act).[53] Also, civil penalties for violations of the Trading With the Enemy Act can range up to $65,000 for each violation. An important factor pertaining to either criminal or civil fines is whether they are willful violations. For information on recent OFAC enforcement information refer to its Webpage at: http://www.treasury.gov/resource-center/sanctions/CivPen/Documents/11082011.pdf.[54] Also, for information on recent OFAC actions refer to its Webpage at: http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20110128.aspx.[55]

Besides the above, the International Emergency Economic Powers Act ("IEEPA"), Title II of Public Law No. 95-223, 91 U.S.C. § 1626, enacted October 28, 1977, authorizes the President to regulate commerce after declaring a national emergency in response to any unusual and extraordinary threat to the United States which has a foreign source.

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52 Please note that the most severe OFAC criminal penalties are for narcotics trafficking. Also, *see* International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. §§ 1701 - 1706 (October 16, 2007), which amended IEEPA's Section 206 on civil and criminal penalties, is available at: http://www.house.gov/legcoun/Comps/International%20Emergency%20Economic%20Powers%20Act.pdf. Also, for a summary of OFAC's civil and criminal penalties please *see* OFAC Regulations For The Financial Community (January 24, 2012), page 2, located at: http://www.treasury.gov/resource-center/sanctions/Documents/facbk.pdf.

53 Also, please note that the most severe OFAC civil penalties are for narcotics trafficking. The OFAC civil penalty process is covered in the regulations governing the various sanctions programs, or for sanctions regulations issued pursuant to the Trading with the Enemy Act in 31 C.F.R. Part 501. Also, for non-bank financial institutions for civil penalty information *see* OFAC's Civil Penalties and Enforcement Information which is at located at: http://www.treasury.gov/resource-center/sanctions/CivPen/Pages/civpen-index2.aspx.

54 OFAC's most recent information action was published on November 8, 2011.

55 For example, on January 14, 2011, OFAC amended its Cuban Asset Control Regulations to allow, among other things, for greater licensing of travel to Cuba for educational, cultural, religious, and journalistic activities and to expand licensing of remittances to Cuba.

Originally, IEEPA did not contain clear language imposing penalties for causing violations of OFAC's sanctions programs. On October 16, 2007, President Bush signed into law the International Emergency Economic Powers Enhancement Act, Public Law No. 110-96, amending IEEPA section 206. The Enhancement Act enhanced criminal and civil penalties for violations of economic sanctions that can be imposed under IEEPA, and also, amended IEEPA to clarify those civil penalties may be assessed for certain unlawful acts. Thus, the IEEPA amendments included language that any person who "causes" a violation of the OFAC sanctions programs can be held liable for both civil and criminal penalties. Specifically, 50 U.S.C. § 1705, which is the penalties section, stated in subsection (a) the following.

> "(a) Unlawful acts
>
> It shall be unlawful for a person to violate, attempt to violate, conspire to violate, **or cause** a violation of any license, order, regulation, or prohibition issued under this chapter." (Emphasis added.)

IEEPA criminal penalties can reach $500,000 for corporations and $250,000 for individuals,[56] and 20 years imprisonment per violation and the civil penalties can reach the greater of $250,000 per violation, or twice the amount of the transaction that is the basis of the violation.[57] IEEPA is the statutory authority for almost all of the economic sanctions that OFAC administers. Prior to the 2007 Enhancement Act, the maximum IEEPA civil penalties that OFAC could impose per economic sanction violation was the amount of the transaction not to exceed $11,000, and then later in March 2006, the maximum civil penalty was increased to $50,000.

Under the Enhancement Act, for example, for a wire transfer violation of $3,000 involving a blocked person, OFAC would have the authority to impose a civil penalty of up to $250,000 (the greater), or a penalty of up to twice the amount of the transaction, or $6,000 (the lesser). On the other hand, for example, for a wire transfer violation of $140,000 involving a blocked person OFAC will have the authority to impose a maximum civil penalty of up to twice the amount of the transaction, or $280,000.

It is important to note that OFAC has broad subpoena authority or powers pertaining to investigations, holding hearing, testimony, records, *etc*. Specifically, 31 C.F.R. § 501.602 states that:

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56 In addition, 18 U.S.C. § 3571 provides that organizations or individuals convicted of violating a criminal statute may be fined the greater of the amount specified in the statute, or **twice** the pecuniary gain or loss from the violation. (Emphasis added.)

57 *See* IEEPA, 50 U.S.C. §§ 1701 - 1706 (October 16, 2007), which amended IEEPA's Section 206 on civil and criminal penalties.

> "[e]very person is required to furnish under oath . . . at any time as may be required . . . complete information relative to any transaction . . . subject to the provisions of this chapter or relative to any property in which any foreign country or any national thereof has any interest of any nature whatsoever, direct or indirect. . . . Except as provided in parts 596 and 597, the Director may, . . . conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation . . . ."

When a U.S. Person fails to compliance with 31 C.F.R. § 501.602 by failing to provide reports on demand to OFAC, there are civil penalty sanctions, as well as under 18 U.S.C. § 1001 criminal penalties, which include fines and imprisonment of not more than 5 years or, if the offense involves international or domestic terrorism, imprisonment of not more than 8 years, or both.

On November 9, 2009, OFAC published the final rule "Economic Sanctions Enforcement Guidelines," as enforcement guidance for persons subject to the requirements of U.S. sanctions statutes, executive orders, and regulations.[58] Fourteen months earlier, on September 8, 2008, this final rule was published as an interim final rule, "Enforcement Guidelines (Interim Guidelines)." The November 2009 final rule sets forth OFAC's enforcement guidelines in determining an appropriate enforcement response to apparent violations of U.S. economic sanctions programs that it administers and enforces. The most significant change from the September 8, 2008 interim final rule is the clarification that OFAC continues to expect U.S. persons to maintain risk-based compliance programs. In this regard, OFAC stated in the preamble to the final rule that:

> "[t]he final rule clarifies this by making explicit reference to risk-based compliance in its discussion of General Factor E, which focuses on a Subject Person's compliance program, and by repromulgating with minor edits and in consolidated form, as an annex to the final rule, the risk matrices that had originally been promulgated as an annex to the 2006 Enforcement Procedures. By these changes, OFAC intends to reflect that it will continue to apply the same risk-based principles it has been applying in assessing the overall adequacy of a Subject Person's compliance program."[59]

58 *See* 74 Fed. Reg. 57593 - 57608 (November 9, 2009), available at: http://www.treasury.gov/resource-center/sanctions/Documents/fr74_57593.pdf.

59 *See* 74 Fed. Reg. 57593, 57597.

Another new provision in the November 2009 OFAC final enforcement guidelines is a civil penalty, in an amount up to $50,000, for U.S. person's failure to maintain records required by OFAC or of a specific license.[60] To comply with this requirement, U.S. persons should consider maintaining all transaction-related records for an economic sanctioned program or SDN hit for five-year period.

VIII. Conclusion

Although casinos and card clubs may not have known much about OFAC until this article, the economic sanctions administered by the agency likely will play a larger and more visible role as middle to large scale gambling establishments continue to conduct cross-border and global financial transactions with high-end gamblers from countries known for their lack of transparency. The way for casinos and card clubs to detect and deter customer criminal activity and terrorism, as well as potential civil and criminal penalties for non-compliance with OFAC requirements, is to have a comprehensive compliance program that includes: creation and retention of records, internal controls, testing, compliance personal, ongoing training, and use of computerized systems and programs. However, while bricks-and-mortar casinos and card clubs in the United States need to devise the means for identifying and controlling the risks associated with OFAC sanctions, the task is not an easy one. Also, for bricks-and-mortar casinos and card clubs that offer customer deposit and credit accounts, check cashing, and transmitting and receiving funds transfers directly from other financial institutions the process of due diligence to uncover individuals on a SDN List, or from a blocked country, needs to be a continuing effort of screening to ensure that these non-bank financial institutions do their part in this effort to support U.S. foreign policy, national security goals, and economic sanctions. Lastly, by bricks-and-mortar casinos and card clubs complying with OFAC requirements when conducting financial transactions with customers, this in turn will help to protect their business reputations while still do their part to support economic and trade sanctions based on U.S. foreign policy and national security goals. If I could wrap this up in a slogan it would be: "***DON'T DO BUSINESS WITH ENEMIES OF THE UNITED STATES OF AMERICA!"***

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60 *See* 74 Fed. Reg. 57593, 57604.

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